



Howrey Docket No.: 05742.0007.CPUS00

2613  
164

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

**Adam Michael Fenne**

Application No.: 09/428,395

Filed: October 28, 1999

For: **MATCHING OF A REDUCED SPECTRUM  
LIGHTING SOURCE WITH VIDEO  
ENCODING PROGRAM VARIABLES FOR  
INCREASED DATA COMPRESSION  
RATIOS**

Art Unit: 2613

Examiner: Howard W. Britton

**TRANSMITTAL OF REQUEST  
FOR RECONSIDERATION OF DECISION DENYING  
PETITION TO WITHDRAW HOLDING OF ABANDONMENT**

***Mail Stop Petition***

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Decision on Petition to Withdraw Holding of Abandonment mailed August 19, 2004, Applicant submits the following documents for appropriate action by the U.S. Patent and Trademark Office:

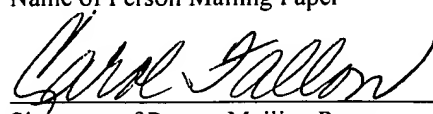
- ☒ Request for Reconsideration of Decision Denying Petition to Withdraw Holding of Abandonment, including Exhibit 1 (6 pp.) and Exhibit 2 (4 pp.);
- ☒ Copy of Decision on Petition to Withdraw Holding of Abandonment; and

**CERTIFICATE OF MAILING**  
(37 C.F.R. §1.8a)

I hereby certify that this paper (along with any referred to as being attached hereto) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to *Mail Stop Amendment*, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

October 18, 2004  
Date of Deposit

Carol Fallon  
Name of Person Mailing Paper

  
Signature of Person Mailing Paper

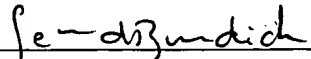
☒ Return postcard.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment to our Deposit Account No. **08-3038**. Kindly make reference to Howrey Docket No. 05742.0007.CPUS00 when charging any fees.

If extensions of time under 37 C.F.R. § 1.136 other than those otherwise provided for herewith are required to prevent abandonment of the present patent application, then such extensions of time are hereby petitioned, and any fees therefor are hereby authorized to be charged to our Deposit Account No. **08-3038**.

Respectfully submitted,

Date: October 18, 2004

  
Sean D. Burdick, Reg. No. 51,513  
PRACTITIONER

HOWREY SIMON ARNOLD & WHITE, LLP  
2041 Fairview Park Drive, **Box No. 7**  
Falls Church, VA 22042  
FAX No. (703) 336-6950  
Telephone No. (949) 759-5219



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the application of:

**Adam Michael Fenne**

Application No.: 09/428,395

Filed: October 28, 1999

For: **MATCHING OF A REDUCED  
SPECTRUM LIGHTING SOURCE WITH  
VIDEO ENCODING PROGRAM  
VARIABLES FOR INCREASED DATA  
COMPRESSION RATIOS**

Art Unit: 2613

Examiner: Howard W. Britton

**REQUEST FOR RECONSIDERATION OF DECISION DENYING  
PETITION TO WITHDRAW HOLDING OF ABANDONMENT**

***Mail Stop Petition***

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicant hereby requests reconsideration of the decision mailed August 19, 2004 denying Applicant's Petition to Withdraw Holding of Abandonment ("Petition").

The Special Program Examiner denied the Petition because it was "not clear from the petition" that the statement required under MPEP § 711.03(c)(II)(b) could be attributed to the Practitioner, since there is a suggestion in the closing paragraph of the Petition that it is the Applicant (rather than the Practitioner) who attesting to the futile search of the file jacket and docket records.

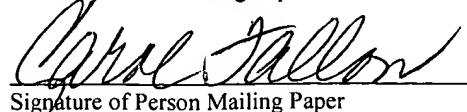
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**CERTIFICATE OF MAILING**  
(37 C.F.R. §1.8a)

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October 18, 2004  
Date of Deposit

Carol Fallon  
Name of Person Mailing Paper

  
Signature of Person Mailing Paper

In response, the undersigned Practitioner hereby affirms that in fact, the statement in the Petition required under MPEP § 711.03(c)(II)(b) was a statement made by the *Practitioner*. Moreover, it follows logically that the statement is attributable to the Practitioner because the Practitioner is the custodian of Applicant's file jacket and Practitioner's docket records, therefore the Practitioner is in the best position to review these files and affirm that the Notice of Allowance was never received.

### **BACKGROUND**

On behalf of the Applicant, Practitioner recounts the following facts:

On December 19, 2002, Applicant timely filed a terminal disclaimer and response to an Office Action, mailed by the U.S. Patent and Trademark Office on October 3, 2002. A postcard was received from the U.S. Patent and Trademark Office on January 3, 2003, stamped December 27, 2002 by the P.T.O. See Exhibit 1, attached herein. Practitioner's docketing manager, Mr. Kory Mingus, entered the Office Action response and a status check for the patent application was noted in the docket for December 19, 2003. See Exhibit 2, attached herein. A one-year status check after the filing of a response is standard procedure for Practitioner's firm.

On June 2, 2003, at the request of the patent agent in charge of the application, Ms. Robin Clow of Practitioner's firm spoke with Examiner Britton regarding the status of the application. Examiner Britton notified her that the application was allowed and a Notice of Allowance was mailed on February 11, 2003. Ms. Clow immediately spoke to several individuals at the U.S. Patent and Trademark Office, and on June 13, 2003, Ms. Toni Hood in the Office of Publications faxed a Notice of Allowance to our office. A thorough search of the file jacket and docket sheet by the Practitioner uncovered no Notice of Allowance documents or entries. In addition, a search of Practitioner's computer databases by the Practitioner for documents routinely scanned upon receipt from the U.S. Patent and Trademark Office turned up no documents for the instant application during the relevant period of time.

In light of the foregoing remarks *made by the undersigned Practitioner*, Applicant and Practitioner believe that a good faith showing has been made that the office action was not received.

**CONCLUSION**

In conclusion, the undersigned Practitioner hereby unequivocally states that:

(a) the Notice of Allowance was not received by the Practitioner; and

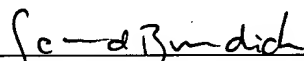
(b) in fact, a search of the file jacket and docket records indicates that the Notice of Allowance was not received during the relevant time period.

Based on the foregoing, Applicant and Practitioner request that upon reconsideration, the Petition be granted, the holding of abandonment be withdrawn, and the subject application be passed to issuance. A completed Issue Fee Transmittal and Issue Fee have been previously submitted with the Petition.

Applicant and Practitioner believe that under MPEP § 711.03(c), no additional fee is due for requesting reconsideration. However, if any such fee is required, the Commissioner is hereby authorized to charge the same to our Deposit Account No. **08-3038**. Kindly make reference to Howrey Docket No. 05742.0007.CPUS00 when debiting this fee.

Respectfully submitted,

Date: October 18, 2004

  
\_\_\_\_\_  
Sean D. Burdick, Reg. No. 51,513  
PRACTITIONER

HOWREY SIMON ARNOLD & WHITE, LLP  
2041 Fairview Park Drive, **Box No. 7**  
Falls Church, VA 22042  
FAX No. (703) 336-6950  
Telephone No. (949) 759-5219

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301 RAVENSWOOD AVENUE  
BOX 34  
MENLO PARK, CA 94025

**RECEIVED**

JAN 03 2003

Howrey - SV



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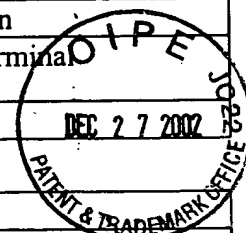
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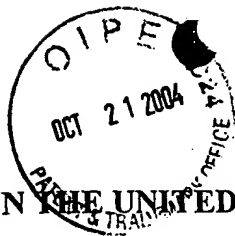
PTO

<input type="checkbox"/> New Application For:	Utility	Priority Date:	
<input type="checkbox"/> Foreign priority already claimed		Fee Amount:	or any related fee not specified
<input type="checkbox"/> Continuation	<input type="checkbox"/> CIP	<input type="checkbox"/> Divisional	CPA <input type="checkbox"/>
<input type="checkbox"/> Specification:		<input type="checkbox"/> Drawings:	
<input checked="" type="checkbox"/> Response to Office Action Dated:	10/3/02	<input type="checkbox"/> Final Rejection	
<input checked="" type="checkbox"/> Other: Transmittal Letter (2 pages); Submission of Formal Drawings; Formal Drawings; Terminal Disclaimer; and postcard			
<input type="checkbox"/> Assignment Enclosed	<input type="checkbox"/> Cert. of Timely Mailing	<input type="checkbox"/> Exp. Mail:	

**IDENTIFICATION OF APPLICATION**

Serial No.: 09/428,395	Responsible Attorney: RCL
Title: MATCHING OF A REDUCED SPECTRUM LIGHTING SOURCE WITH VIDEO ENCODING PROGRAM VARIABLES FOR INCREASED DATA COMPRESSION RATIOS	
Applicant: Adam Michael Fenne	Entered By:
Client: Pixelon.com, Inc.	Firm File No.: 05742.0007.CPUS00
Mailed: 12/19/02	Filed: 10/28/99
Due Date:	





IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

**Adam Michael Fenne**

Application No.: 09/428,395

Filed: October 28, 1999

For: **MATCHING OF A REDUCED  
SPECTRUM LIGHTING SOURCE  
WITH VIDEO ENCODING PROGRAM  
VARIABLES FOR INCREASED DATA  
COMPRESSION RATIOS**

Art Unit: 2613

Examiner: Howard W. Britton

**FILE COPY**

**TRANSMITTAL OF RESPONSE TO OFFICE ACTION**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

Dear Sir:

Applicant submits the following documents for appropriate action by the U.S. Patent and Trademark Office:

- ☒ Response to Office Action;
- ☒ Submission of Formal Drawings;
- ☒ Formal Drawings;
- ☒ Terminal Disclaimer; and

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**CERTIFICATE OF MAILING**  
(37 C.F.R. §1.8a)

I hereby certify that this paper (along with any referred to as being attached hereto) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to the Commissioner for Patents, Washington, D.C. 20231.

12/19, 2002  
Date of Deposit

Robin L. Clow  
Name of Person Mailing Paper

B. Clow  
Signature of Person Mailing Paper

☒ Return postcard.

The U.S. Patent and Trademark Office is hereby authorized to charge \$55.00, and charge any fee deficiency or credit any overpayment, to our Deposit Account No. 08-3038, referencing Docket No. 05742.0007.CPUS00.

Respectfully submitted,

Dated: December 18, 2002.

  
William C. Rooklidge, Reg. No. 31,791

HOWREY SIMON ARNOLD & WHITE, LLP  
Box No. 34  
301 Ravenswood Avenue  
Menlo Park, CA 94025  
Facsimile: (650) 463-8400  
Telephone: (949) 759-2904



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Adam Michael Fenne

Serial No. 09/428,395

Filed: October 28, 1999

For: **MATCHING OF A REDUCED  
SPECTRUM LIGHTING  
SOURCE WITH VIDEO  
ENCODING PROGRAM  
VARIABLES FOR INCREASED  
DATA COMPRESSION  
RATIOS**

Group Art: 2613

Examiner: Howard W. Britton

RESPONSE TO OFFICE ACTION

Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

In response to the Office Action mailed October 3, 2002, kindly enter the following remarks:

REMARKS

Claims 1-13 are pending in the instant application. Claims 9-13 have been allowed. Claims 1-8 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of copending Application No. 09/351,618 (now U.S. Patent No. 6,470,048). The drawings were objected to as being informal.

CERTIFICATE OF MAILING  
(37 C.F.R. §1.8a)

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12/19, 2002  
Date of Deposit

Robin L. Clow  
Name of Person Mailing Paper

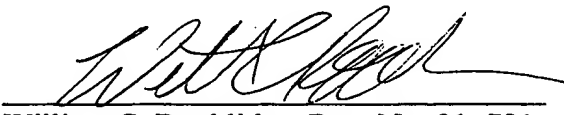
R. Clow  
Signature of Person Mailing Paper

All of the stated grounds of rejection have been rendered moot with the timely filing of a terminal disclaimer in compliance with 37 C.F.R. § 1.321(c). In addition, formal drawings in accordance with 37 C.F.R. § 1.84 are herewith submitted to overcome the objections to the drawings. As such, the instant application is in condition for allowance. Prompt and favorable consideration of this Response is respectfully requested.

The U.S. Patent and Trademark Office is hereby authorized to charge \$55.00 for the Terminal Disclaimer Fee under 37 C.F.R. § 1.20(d), and charge any fee deficiency or credit any overpayment, to our Deposit Account No. 08-3038, referencing Docket No. 05742.0007.CPUS00.

Respectfully submitted,

Date: December 18, 2002

  
William C. Rooklidge, Reg. No. 31, 791

HOWREY SIMON ARNOLD & WHITE, LLP  
301 Ravenswood Avenue, Box No. 34  
Menlo Park, CA 94025  
FAX No. (650) 463-8400  
Telephone No. (949) 759-3904

<b>CASE RECORD LISTING</b>
----------------------------

<b>File No</b>	05742.0007.CPUS00	<b>Status Code</b>	PEN
<b>Old Matter Number</b>		<b>Country Code</b>	US
<b>Short Title</b>	Matching of a Reduced Spectrum Lighting Source with Video Encoding Program Variables for Increased Data Compression Ratios	<b>Case Type</b>	CIP
<b>Region</b>	CALIFORNIA	<b>Last Amended</b>	
<b>Location</b>	IRVINE	<b>Last Amended By</b>	KMINGUS
<b>Defendant (Opps)</b>		<b>Entity Size Ind</b>	Small
<b>Opposer (Opps)</b>		<b>CPA Reportable</b>	Y
<b>Language of Filing</b>		<b>Module</b>	Patents

<u>Base Reference</u>	<u>Date</u>	<u>Number</u>
Application No. / Date	28 Oct 1999	09/428,395
Grant / Issue No. / Date		
Publication (early)		
Publication (post-examination)		

<u>Role Type</u>	<u>Name</u>
Inventor	Fenne Adam Michael
Client	Pixelon.com, a California corporation
Billing Attorney	Rooklidge William C.
Responsible Attorney	Rooklidge William C.
Action Person	Westin Lori P.

## CASE RECORD LISTING

<u>Diary Due Dates</u>	<u>Action</u>	<u>Comments</u>	<u>Completed Date</u>
6/1/2003	Status of Filing Receipt	(orig dtd 5/5/02) Filing Receipt missing from transferred file; 8/20/02 - sent Client further req for power to obtain copy; 10/22/02 - spoke to Client remd of Filing Receipt inst-client wil confer to determine costs; per RClow's 4/29/03 email inst - move	
12/19/2003	Status Office Action	06/02/03 - per RClow talked w/Exam Britton - case allowed in February - Notice of Allowance sent on 2/11/03 & published 4/25/03	
1/28/2000	Status of Missing Parts		12/1/1999
1/26/2000	Response to Missing Parts Due		1/20/2000
6/20/2002	Status of Revocation/POA	12/20/01 - filed Rev/POA & Change of Correspondence Address; 01/07/02 - rec'd Return Rev/POA Postcard date-stamped 12/20/01; 02/05/02 - rec'd Notice Re POA dated 1/7/02 - POA accepted	2/5/2002
7/13/2002	Status of Assignment Recordal	Pixelon to Dante due to a bankruptcy procedure re-submitted February 27, 2002 by Joel Voelzke; 05/10/02 - dtd Notice of Recordation rec'd	5/10/2002
10/1/2002	Status of Patent Application	04/01/02 - left mess. w/ Ex. req. status of app.; 04/02/02 - Ex. left mess. con. that there are no outstanding OA (no action yet), Ex. says it will be 3-6 m. before OA is ready to be sent;	10/9/2002
1/9/2003	Status Check		10/9/2002
1/3/2003	Response to OA	10/09/02 - rec'd 3M Non-Final Office Action dtd 10/3; 10/11/02 - sent Client copy of OA & req inst by 11/15/02; per LPW's 11/18 dkt - rec'd Client inst to file terminal disclaimer; 12/19/02 - filed Resp to OA; 12/19/02 - sent Client copy of Resp filed	12/19/2002
2/3/2003	Response to OA Extension 1	01/03/03 - rec'd Return Postcard dtd 12/27/02	12/19/2002
3/3/2003	Response to OA Extension 2		12/19/2002
4/3/2003	Response to OA Final Deadline		12/19/2002

**CASE RECORD LISTING****Abstract****Remarks**

Client No.: 17954-22

Examiner: George Bugg (703-305-2329)

12/20/01 - filed Rev/POA & Change of Correspondence Address; 01/07/02 - rec'd Return Rev/POA Postcard date-stamped 12/20/01; 02/04/02 - rec'd Notice of Non-Recordation dated 01/25/02 - 2-sided pgs not acceptable (Assignment from Pixelon to Dante re Bankruptcy sale also for 3NPUS00, 4NPUS00, 5NPUS00, 6CPUS01, 7CPUS00, 8CPUS00, 9CPUS00 & 09/351,028 - see 0006NPUS00 for docketing); 02/12/02 - rec'd Notice of Recordation dtd 1/26/02 - Reel/Frame: 012336/0853, Recordation Date: 12/03/01, Dante Pugliese to Pixelon.com, Inc.; per K. Cheatham - POA was rec'd and is in file;

Assignment Info (Bankruptcy Sale)

Reel/Frame: 012675/0337

Assignor: Pixelon, Inc.

Assignee: Dante Pugliese

Recordation Date: 02/27/02

**Claims****Date Docketed:** 02 Jun 2003**DOCKETED BY:** \_\_\_\_\_**CHECKED BY:** \_\_\_\_\_



UNITED STATES PATENT AND TRADEMARK OFFICE



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www.uspto.gov

Paper No. 16

William C. Rooklidge  
Howrey Simon Arnold & White LLP  
301 Ravenswood Avenue Box No 34  
Menlo Park CA 94025

MAIL

AUG 19 2004

DIRECTOR OFFICE  
TECHNOLOGY CENTER 2600

In re Application of  
Adam Michael Fenne  
Application No. 09/428,395  
Filed: October 28, 1999  
For: MATCHING A REDUCED SPECTRUM  
LIGHTING SOURCE WITH VIDEO ENCODING  
PROGRAM VARIABLES FOR INCREASED  
DATA COMPRESSION RATIOS

DECISION ON PETITION  
TO WITHDRAW HOLDING OF  
ABANDONMENT

This is a decision on the Petition to Withdraw Holding of Abandonment which is treated as pursuant to 37 C.F.R. §1.181, filed June 26, 2003 and resubmitted on September 29, 2003 and again on April 13, 2004. No fee is required.

The petition is **DENIED**.

This application became abandoned due to failure to pay the issue fee in response to the Notice of Allowance and Issue Fee Due mailed February 11, 2003. A Notice of Abandonment was mailed on June 19, 2003.

Petitioner has alleged non-receipt of the Notice of Allowance and Issue Fee Due. In the petition, the petitioner has provided a statement that the Notice was not received by the petitioner and a copy of the docket record where the non-received Office action would have been entered had it been received and docketed.

MPEP § 711.03(c) Petitions Relating to Abandonment, states in part:...

II. PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION

The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that:

- (a) the Office communication was not received by the practitioner;
- (b) attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.

Moreover, a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

WASHINGTON, D.C.

DOCKETED

8/27/04

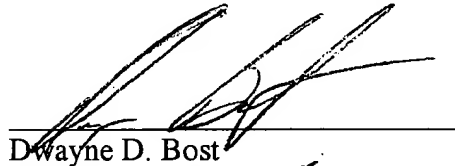
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AUG 24 2004

As mentioned, Petitioner states that the Notice of Allowance and Issue Fee Due was not received and also references a docket log within their petition. Moreover, the petition does state "A thorough search of the file jacket and docket sheet uncovered no notice of allowance documents or entries", however, it is not clear from the petition if this is a statement from the Practitioner or the Applicant. The following paragraph of the petition states "...Applicant believes that he has made a good faith showing that the office action was not received." This tends to suggest that the Applicant is making the statement in the previous paragraph and thus does not comply with the requirements of a successful petition to withdraw the holding of abandonment due to the lack of a statement from the Practitioner attesting to a personal search of the file jacket and docket records and indicating that the office communication was not received.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision and include the statement from the Practitioner as outlined above.

The file is being forwarded to the file repository.

A handwritten signature in black ink, appearing to read "Dwayne D. Bost", is written over a horizontal line.

Dwayne D. Bost  
Special Program Examiner  
Technology Center 2600  
Communications